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GENENTECH, INC.
1 DNA WAY
SOUTH SAN FRANCISCO, CA 94080

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JAN 06 2004

OFFICE OF PETITIONS

In re Application of
Lee et al.
Application No. 09/104,063
Filed: June 24, 1998
Attorney Docket No. P0706P2C2D2

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DECISION ON PETITION

This is a decision on the "PETITION FOR CORRECTION OF FILING DATE under 37 C.F.R. § 1.10," filed November 21, 2003, in the above-identified application.

The petition is **DISMISSED AS INAPPROPRIATE**.

Petitioner is given TWO (2) MONTHS to request reconsideration. This period is governed by § 1.181(f). This period is not extendable under § 1.136(a).

Petitioner requests correction of the filing date found on the second line of the "Domestic Priority data as claimed by applicant" section so that it reads:

which is a CON of 08/664,228 06/06/1996 ABN

On petition, petitioner seeks to provide evidence to establish that the parent application was filed on June 6, 1996.

A review of Office records confirms that parent application No. 08/664,228 has a filing date of record of June 7, 1996. Thus, the matter raised is a petitionable one in application No. 08/664,228. Furthermore, no petition to correct the filing date is present in the prior application. Petitioner is not requesting correction of an error in the instant application, relative to the priority data set forth therein. The Domestic Priority data correctly reflects the filing date of record of the prior application.

Petitioner is advised that correction of the filing date in application No. 08/664,228 is by petition addressed to the Office of Petitions and directed to application No. 08/664,228. See also 37 CFR 1.4(b).

Given petitioner's arguments, petitioner is further advised of the applicable provisions of 37 CFR 1.10(c), as follows:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date

accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

In regards to filing a petition directed to application No. 08/664,228, it is noted that petitioner must satisfy the requirement that the petition be filed promptly after the according of the June 7, 1996 filing date, or establish that the promptness requirement be waived pursuant to 37 CFR 1.183. Further, the submission of an "Express Mail" mailing label, such as the one provided on November 21, 2003, is insufficient to satisfy requirement (3) above as it does not show the "date-in."

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
ATTN: NANCY JOHNSON
SENIOR PETITIONS ATTORNEY

By hand: CUSTOMER SERVICE WINDOW
2011 South Clark Place
Crystal Plaza Two Lobby
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions